

**38 CFR Part 17****RIN 2900-AQ70****Medical Benefits Package; Chiropractic Services**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to revise its medical regulations to add chiropractic services to the definitions of medical services and preventive care. VA would further revise the definition of medical services to include rehabilitative services consistent with its statutory definition and to reflect changes made in other VA medical regulations and in prior legislation not previously codified. The proposed amendments would make VA medical regulations consistent with current practices, prior changes in law and VA's medical regulations, and changes in law made by the Consolidated Appropriations Act, 2018. These amendments would not substantively change the current administration of medical benefits to veterans.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Comments may be submitted through <http://www.Regulations.gov>. Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection, or copies.

**FOR FURTHER INFORMATION CONTACT:** Anthony Lisi, D.C., Director, Veterans Health Administration Chiropractic Service, Rehabilitation and Prosthetic Services

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(This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 1710 of title 38 of the United States Code (U.S.C.) requires VA to furnish hospital care and medical services which the Secretary determines to be needed for eligible veterans. Prior to March 23, 2018, under 38 U.S.C. 1701(6), medical services included medical examination and treatment, rehabilitative services, surgical services, dental services and appliances, optometric and podiatric services, preventive health services, noninstitutional extended care services, travel and certain incidental expenses, and prosthetic and related items and services. Preventive health services were specifically listed as medical services in section 1701(6)(D) while rehabilitative services were listed as medical services in the introductory text of section 1701(6). Both rehabilitative services and preventive health services were further defined in 38 U.S.C. 1701(8) and 1701(9), respectively. Rehabilitative services included professional, counseling, and guidance services and treatment programs necessary to restore the physical, mental, and psychological functioning of an ill or disabled person, while preventive health services included such services as medical and dental examinations, patient health education, mental health preventive services, substance abuse prevention measures, certain immunizations, and routine vision testing and eye care services.

On March 23, 2018, the President of the United States signed the Consolidated Appropriations Act, 2018, Public Law (Pub. L.) 115-141 (hereafter “Appropriations Act”). In section 245 of Division J of the Appropriations Act, Congress amended 38 U.S.C. 1701(6) by adding chiropractic services to the definition of medical services. Similarly, Congress amended the definition of rehabilitative services under section 1701(8) to include chiropractic services. Congress also amended section 1701(9) by adding

chiropractic examinations and services to the definition of preventive services under section 1701(9). VA proposes to amend title 38 Code of Federal Regulations (CFR) 17.30 and 17.38 to conform to these statutory changes and for additional reasons, as set forth in more detail in the subsequent discussions.

#### Section 17.30 Definitions.

VA has incorporated the definitions of medical services and preventive services into its medical regulations. Currently, § 17.30(a) defines the term medical services to include medical examination, treatment and rehabilitative services; surgical services; dental services and appliances as authorized in §§ 17.160 through 17.166; optometric and podiatric services; (in the case of a person otherwise receiving care or services under this chapter) preventive health care services set forth in 38 U.S.C. 1701(9); noninstitutional extended care services; wheelchairs, artificial limbs, trusses and similar appliances; special clothing made necessary by the wearing of prosthetic appliances, and such other supplies and services as are medically determined to be reasonable and necessary.

We propose to make several changes to this definition of medical services in 38 CFR 17.30(a) to make the regulation easier to read, to provide clarification, to conform to the statutory authority (38 U.S.C. 1701), including amendments made to this authority by the Appropriations Act, and to reference other applicable VA medical regulations in 38 CFR part 17.

For clarity and because of other changes we propose to amend § 17.30 as further explained below. We propose to redesignate current paragraphs (a)(2) and (a)(3) as (a)(3) and (a)(4), respectively; propose to move the language, medical examination, treatment, and rehabilitative services, from paragraph (a) to paragraph

(a)(1) and revise it; and propose to move the language in current paragraph (a)(1) to paragraph (a)(2) and revise it.

Paragraph (a) would continue to include the heading of medical services and would state that the term medical services includes the following; after which, subparagraphs (1) through (4) would list the definition of medical services.

Revised paragraph (a)(1) would explain that medical services include medical examination, treatment, and rehabilitative services (as defined in 38 U.S.C. 1701(8)).

As we do not further define in VA's medical regulations rehabilitative services, as used in 38 U.S.C. 1701(8), we propose to amend the definition of medical services in 38 CFR 17.30(a)(1) to make clear that the term "rehabilitative services" as used in these regulations is defined in 38 U.S.C. 1701(8). This would be similar to how we refer to preventive services in this definition of medical services under current § 17.30(a)(1). Individuals could thus refer to the term rehabilitative services in 38 U.S.C. 1701(8) to understand how we define it for purposes of medical services in part 17.

Consistent with changes to 38 U.S.C. 1701(6) made by the Appropriations Act, we propose to include chiropractic services in revised paragraph (a)(2).

Current paragraph (a)(1) includes a parenthetical before the part of the definition that references preventive health care services set forth in 38 U.S.C. 1701(9). This parenthetical phrase, (in the case of a person otherwise receiving care or services under this chapter), was included in current 38 CFR 17.30(a)(1) with respect to preventive health care services to be consistent with prior statutory authority. However, section 103 of Public Law 104-262 struck the parenthetical phrase from the statutory location where it applied to preventive health care services and inserted it before wheelchairs. This phrase, as included in current § 17.30(a)(1), is now inconsistent with the current language of 38 U.S.C. 1701(6)(D) and (9) with respect to preventive care. Instead, this parenthetical phrase is included in section 1701(6)(F), which states that

medical services include the following: in the case of a person otherwise receiving care or services under this chapter – (i) wheelchairs, artificial limbs, trusses, and similar appliances; (ii) special clothing made necessary by the wearing of prosthetic appliances; and (iii) such other supplies or services as the Secretary determines to be reasonable and necessary. Because we are proposing to move and revise the language in current paragraph (a) to paragraph (a)(1), we would move the current language in paragraph (a)(1) to paragraph (a)(2) and revise it to remove the parenthetical with respect to preventive health care services. However, as explained in the next paragraph, the parenthetical phrase would not be included in the revisions to 38 CFR 17.30(a)(2) related to 38 U.S.C. 1701(6)(F).

Due to changes we made to VA's medical regulations in part 17, we would also amend § 17.30(a)(2) to include items and services as authorized in §§ 17.3200 through 17.3250. In a final rule published on December 28, 2020, we established new regulations on eligibility and criteria for the provision to veterans of certain items and services as authorized medical services pursuant to 38 U.S.C. 1701(6)(F) and 38 U.S.C. 1710(a). See 85 FR 84259. As currently written, the definition of medical services in § 17.30(a)(1) includes wheelchairs, artificial limbs, trusses and similar appliances, and such other supplies or services as are medically determined to be reasonable and necessary. This language is consistent with the language of 38 U.S.C. 1701(6)(F), which is further interpreted and implemented in the regulations at 38 CFR 17.3200 through 17.3250. Thus, as we are moving and revising this language in revised paragraph (a)(2), we would amend the definition of medical services to remove the language included in current paragraph (a)(1) that refers to wheelchairs, artificial limbs, trusses and similar appliances, and such other supplies or services as are medically determined to be reasonable and necessary and, in its place, add the items and services authorized by regulations at §§17.3200 through 17.3250. We would not include

in revised § 17.30(a)(2) the parenthetical phrase discussed in the previous paragraph that is currently included in section 1701(6)(F) as such language is implemented in the regulations at §§ 17.3200 through 17.3250, thus making it redundant and unnecessary to include that phrase in revised § 17.30(a)(2) with respect to items and services authorized under §§ 17.3200 through 17.3250.

In the Authority section of 38 CFR part 17, we propose to add a citation to 38 U.S.C. 1701 as authority for § 17.30. This change would be consistent with the Office of the Federal Register's current format for the placement of authority citations in the CFR.

#### Section 17.38 Medical Benefits Package.

Relatedly, 38 CFR 17.38(a) sets forth the hospital, outpatient, and extended care services that constitute the medical benefits package (basic care and preventive care) available to eligible veterans. Included in the medical benefits package under § 17.38(a)(2) is preventive care, which the regulation makes clear is defined in 38 U.S.C. 1701(9). The regulation further provides examples of what is included: periodic medical exams, health education, including nutrition education; maintenance of drug-use profiles, drug monitoring, and drug use education; mental health and substance abuse preventive services; immunizations against infectious disease; prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature; genetic counseling concerning inheritance of genetically determined diseases; routine vision testing and eye-care services; periodic reexamination of members of high-risk groups for selected diseases and for functional decline of sensory organs, and the services to treat these diseases and functional declines.

To conform with the changes to 38 U.S.C. 1701(9) made by the Appropriations Act, we would amend 38 CFR 17.38(a)(2) by adding a new paragraph (x) to specifically

include chiropractic services as preventive care. The term chiropractic services would encompass both chiropractic services and examinations. To maximize healthcare outcomes for veterans, the type of chiropractic services that would be available to eligible veterans as preventive care would be those services that are consistent with current evidence-based practices and chiropractic training and licensure.

In addition to the preventive care provided pursuant to 38 CFR 17.38(a)(2), VA provides basic care under § 17.38(a)(1). Basic care includes such care as inpatient and outpatient medical, surgical and mental healthcare; inpatient hospital healthcare; prescription drugs; and rehabilitative services. While not explicitly stated in § 17.38(a)(1), VA provides chiropractic services to veterans enrolled in VA's healthcare system as part of basic care. These services include examination, diagnosis, treatment, and management of neuromuscular and musculoskeletal conditions using non-pharmacological and non-operative methods. Because we have interpreted basic care to include chiropractic services, have provided these services as part of the medical benefits package, and will continue to do so, we are not amending the definition of basic care in § 17.38(a)(1) to explicitly include such services as it would be unnecessary to do so.

We note that we do not define rehabilitative services in our medical regulations, though the medical benefits package explicitly includes them in basic care, 38 CFR 17.38(a)(1)(vi), so we find it unnecessary to make any further changes to § 17.38 based on the changes to the definition of rehabilitative services in 38 U.S.C. 1701(8).

In the Authority section of 38 CFR part 17, we propose to add a citation to 38 U.S.C. 1701 as authority for § 17.38. This change would be consistent with the Office of the Federal Register's current format for the placement of authority citations in the CFR.

For those reasons explained above, we would amend the medical services definition in § 17.30 to include chiropractic services, reference 38 U.S.C. 1701(8) for

purposes of defining rehabilitative services, remove the parenthetical before preventive health care services, and reference VA's regulations at 38 CFR 17.3200 through 17.3250. We would also amend § 17.38 to add chiropractic services to preventive care.

#### Paperwork Reduction Act

This action does not contain any provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. There would be no material changes to the medical benefits available to veterans. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action



under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Government programs—veterans, Grant programs—veterans, Health care, Health facilities, Health professions,

Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 8, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

***Consuela Benjamin,***

*Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of General Counsel,  
Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

## PART 17 – MEDICAL

1. The authority citation for part 17 is amended by adding an entry for § 17.30 and revising the entry for §17.38 to read in part as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

Section 17.30 is also issued under 38 U.S.C. 1701.

\* \* \*

Section 17.38 is also issued under 38 U.S.C. 1701 and 1703.

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2. Amend §17.30 by:

a. Redesignating paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4), respectively.

b. Revising paragraphs (a) introductory text, and (a)(1), and adding (a)(2) to read as follows:

### § 17.30 Definitions.

\* \* \* \* \*

(a) *Medical services*. The term *medical services* includes the following:

(1) Medical examination, treatment, and rehabilitative services (as defined in 38 U.S.C. 1701(8)).

(2) Surgical services, dental services and appliances as authorized in §§17.160 through 17.166, optometric and podiatric services, chiropractic services, preventive health care services set forth in 38 U.S.C. 1701(9), noninstitutional extended care, and items and services as authorized in §§17.3200 through 17.3250.

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3. Amend §17.38 by adding new paragraph (a)(2)(x) to read as follows:

§ 17.38 Medical benefits package.

(a) \* \* \*

(2) \* \* \*

(x) Chiropractic services.

\* \* \* \* \*

[FR Doc. 2021-22535 Filed: 10/20/2021 8:45 am; Publication Date: 10/21/2021]